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# SUPER LAW GROUP, LLC

September 1, 2016

**Via Certified Mail, Return Receipt Requested**

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Long Island Customs  
Anthony Geremia  
150 Thorburn Ave.  
Lindenhurst, New York 11757

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

Dear All:

We are writing on behalf of Sierra Club, particularly Sierra Club's Long Island Group (hereinafter "Sierra Club"),<sup>1</sup> to notify you of Sierra Club's intent to file suit against International

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<sup>1</sup> Sierra Club is a not-for-profit Environmental organization existing under the laws of the state of California, headquartered in Oakland, California. Sierra Club has over 60 local chapters nationwide, including New York's Atlantic Chapter, composed of a number of Sierra Club Groups, such as the Long Island Group. Sierra Club's

Transportation and Equipment Exports, Ltd., Michael Bulzomi, Rita Judith Gambino, Cherokee Realty Corp., and Long Island Customs, (collectively, “International Transportation”) pursuant to Section 505(a) of the federal Clean Water Act (“CWA”)<sup>2</sup> for violations of the CWA.

Sierra Club intends to file suit, as an organization and on behalf of its adversely affected members, in the United States District Court for the Eastern District of New York seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this letter.<sup>3</sup>

Sierra Club intends to take legal action because International Transportation is discharging polluted stormwater from its facilities at 300 Henry Street (Block 2, Lot 52.006), Lindenhurst, New York, 11757, 1-A Bahama Street (Block 3, Lot 072.001), Lindenhurst, New York, 11705, and 150 Thorburn Avenue (Block 2, Lot 52.004), Lindenhurst, New York, 11757 (“the Facility”) to the waters of the United States without a permit in violation of Sections 301(a) and 402(p)(2)(B) of the Clean Water Act.<sup>4</sup>

Further, International Transportation has not applied for coverage under, nor complied with the conditions of, an individual National Pollutant Discharge Elimination System (“NPDES”) permit or the General Permit for the Discharge of Stormwater Associated with Industrial Activity (“General Permit”)<sup>5</sup> issued by the New York State Department of Environmental Conservation (“DEC”), in violation of Sections 402(p) and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

## I.

### BACKGROUND

With every rainfall event, hundreds of millions of gallons of polluted rainwater pour into New York Harbor, Long Island Sound, and other receiving waters. The consensus among agencies

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mission is to explore, enjoy, and protect the planet; to practice and promote responsible use of the earth’s ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Sierra Club achieves its missions through public education, advocacy for sound public policies, and participation in legal and administrative forums. Sierra Club has more than 630,000 members, including members of the Long Island Group who reside near, use and enjoy the Great South Bay and the waters and tributaries of the Great South Bay, including Santapogue Creek: which is polluted by industrial stormwater runoff.

<sup>2</sup> 33 U.S.C. § 1365(a). We refer to statutory provisions by their section in the Clean Water Act and provide the parallel citation to the United States Code only on first reference.

<sup>3</sup> See 40 C.F.R. § 135.2(a)(3)(c) (notice of intent to file suit is deemed to have been served on the postmark date).

<sup>4</sup> 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

<sup>5</sup> New York State Department of Environmental Conservation, *SPDES Multi-Sector General Permit For Stormwater Discharges Associated With Industrial Activity*, Permit No. GP-0-12-001, (hereinafter “General Permit”), available at <http://www.dec.ny.gov/chemical/9009.html> (last visited June 13, 2016). This General Permit replaces earlier general permits for the discharge of stormwater associated with industrial activity. It became effective on October 1, 2012, and will expire on September 30, 2017.

and water quality specialists is that stormwater<sup>6</sup> pollution accounts for more than half of the total pollution entering the marine environment each year.

DEC has designated more than 7,000 river miles, 319,000 acres of larger waterbodies, 940 square miles of bays and estuaries, and 592 miles of Great Lakes shoreline in the State as "impaired," or not meeting water quality standards, and unable to support beneficial uses such as fish habitat and water contact recreation.<sup>7</sup> For the overwhelming majority of water bodies listed as impaired, stormwater runoff is cited as a primary source of the pollutants causing the impairment. Contaminated stormwater discharges can and must be controlled in order to improve the quality and health of these waterbodies.

Stormwater discharges flow from the Facility through a storm sewer into Santapogue Creek and ultimately into the Great South Bay. DEC has classified Santapogue Creek as an SC waterbody.<sup>8</sup> Under New York's Water Quality Standards, a waterbody that is designated as SC is meant to be suitable for fishing and for fish, shellfish and wildlife propagation and survival.<sup>9</sup> The New York Water Quality Standards also set numeric and narrative criteria for different water pollution parameters including dissolved oxygen, oil and grease, suspended and settleable solids, bacteria (pathogens), pH, temperature, nutrients, and others. A waterbody must meet these numeric and narrative criteria in order to support its designated uses.<sup>10</sup>

DEC has documented reduced water quality in Santapogue Creek as a result of pollution.<sup>11</sup> DEC has identified high oxygen demand (low levels of dissolved oxygen) and silt and sediment pollution attributable in part to urban stormwater runoff as known pollution problems in Santapogue Creek.<sup>12</sup> Illegal stormwater discharges from this Facility carry sediment and oxygen demanding chemicals into Santapogue Creek and therefore contribute directly to its problems.

For years, Santapogue Creek has been overlooked but, in recent decades, the town of Babylon has worked to reclaim the quality of Santapogue Creek and the wetlands that it supports. It is time for International Transportation to join fully in this broader effort to restore the biological integrity of Santapogue Creek and the Great South Bay. At a minimum, International Transportation must stop illegally discharging polluted stormwater and other effluents into Santapogue Creek.

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<sup>6</sup> Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt. See 40 C.F.R. § 122.26(b)(13).

<sup>7</sup> See EPA, Watershed Assessment, Tracking and Environmental Results, New York Assessment Data for 2012, [http://ofmpub.epa.gov/waters10/attains\\_state.report\\_control?p\\_state=NY&p\\_cycle=2012&p\\_report\\_type=A](http://ofmpub.epa.gov/waters10/attains_state.report_control?p_state=NY&p_cycle=2012&p_report_type=A) (last visited Oct. 14, 2014).

<sup>8</sup> See 6 N.Y.C.R.R. § 925.6

<sup>9</sup> See 6 N.Y.C.R.R. § 701.

<sup>10</sup> See 6 N.Y.C.R.R. §§ 702, 703.

<sup>11</sup> See NY DEC, *Waterbody Inventory/Priority Waterbodies List*, available at [http://www.dec.ny.gov/docs/water\\_pdf/wiatllisgsbfii.pdf](http://www.dec.ny.gov/docs/water_pdf/wiatllisgsbfii.pdf).

<sup>12</sup> See *Id.*



## II.

### **STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED AND ACTIVITIES ALLEGED TO BE VIOLATIONS**

#### **A. International Transportation Is Discharging Stormwater Associated with Industrial Activity to Waters of the United States Without a Permit.**

The CWA prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.<sup>13</sup> International Transportation's industrial activity at the Facility has caused and continues to cause a "discharge of pollutants" within the meaning of Section 502(12) of the CWA<sup>14</sup> and a "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14) from the Facility on at least each and every day that there has been a rain event of more than 0.1 inches.<sup>15</sup> The Facility has exposed and continues to expose industrial pollutants to stormwater, at a minimum, by (a) receiving, storing, processing, and transporting vehicles, vehicle parts and other industrial materials outside or otherwise exposing them to the elements, and (b) from vehicles that discharge pollutants or enter and leave the Facility while tracking pollutants off site. During precipitation events (including runoff from rainfall and snow or ice melt events), pollutants are carried away from the Facility in stormwater discharges.

International Transportation's activities at the Facility include but are not limited to the purchase, collection, processing, dismantling, storage, reshipment and resale of used vehicles and parts outdoors. Sierra Club believes the Facility houses old vehicles, motors, chassis, car parts, tires, batteries, oils and other automotive fluids, paints, and scrap piles that contain, but are not limited to, industrial scrap steel and non-ferrous materials, including but not limited to aluminum, copper, zinc, lead, nickel, cadmium and various alloys that are contaminated with industrial pollutants.

According to EPA, industrial activity of the type engaged in by International Transportation often leads to the release of pollutants including: car parts; scrap metal; paint; sediment; crushed glass; copper; lead; zinc; nickel; iron; aluminum; arsenic; cadmium; cobalt; silver; mercury; and other metals, as well as and numerous other waste materials.<sup>16</sup>

In addition, machinery on the site may release fuel, oil, lubricants, PCBs, PAHs, an array of metals, pH-affecting substances and chemical residue. These toxic pollutants are often generated in the form of small particulate matter, which settles on the ground and other surfaces that are exposed to stormwater and non-stormwater flows. Also, vehicles at the Facility may expose

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<sup>13</sup> 33 U.S.C. § 1311, 1342.

<sup>14</sup> 33 U.S.C. § 1362(12).

<sup>15</sup> EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity. *See, e.g.*, 40 C.F.R. § 122.26(c)(1)(E)(6) (using 0.1 inches as the distinguishing threshold of a storm event).

<sup>16</sup> *See* EPA, "Industrial Stormwater Fact Sheet Series, Sector M: Automobile Salvage Yards," available at <http://efpub.epa.gov/npdes/stormwater/swsectors.cfm> (last visited Feb. 24, 2012).

many other pollutants to the elements, including gasoline, diesel fuel, anti-freeze, and hydraulic fluids.

In carrying out its activities at the Facility, International Transportation stores and handles materials in a manner that exposes them to precipitation and snowmelt. Because International Transportation fails to adequately fence, shelter and otherwise contain these materials to prevent their release to the environment, precipitation falls on and flows over exposed materials, fluids, and particulates. Stormwater picks up sediment, hydrocarbons, grease, metals, paints, plastic, solvents, nutrients, pathogens, particulates, dust and other solids that can dissolve or suspend in stormwater, and other trash and pollutants associated with the Facility's operations. Stormwater, objects, and debris are then conveyed off-site via municipal storm drains and into waters of the United States. Further, vehicles at or parked near the Facility are sources of pollution. They also track dust, particulate matter, and other contaminants to areas on and off the premises from which these pollutants can enter stormwater and, ultimately, waters of the United States.

Polluted stormwater discharges flow from the Facility through storm drains located on Cord, Thorburn, and Bahama Streets and into the Santapogue Creek, which is a "water of the United States," as defined in 40 C.F.R. § 122.2 and, therefore, a "navigable water" as defined in Section 502(7) of the CWA. International Transportation does not have a NPDES permit for these discharges of pollutants. Thus, International Transportation is discharging polluted industrial stormwater into navigable waters of the United States without the permit required under Sections 301 and 402 of the CWA.

**B. International Transportation is Violating the Clean Water Act by Failing to Apply for NPDES Permit Coverage.**

International Transportation is engaged in the business of purchasing, collecting, storing, processing, reselling and shipping used vehicles and vehicle parts and therefore is an industrial discharger engaged in activity under Standard Industrial Classification ("SIC") Code 5015, which is an industrial activity included in Sector M of the General Permit. Pursuant to Section 402(p) of the CWA and regulations promulgated by EPA pursuant to the CWA, International Transportation must apply for coverage under the General Permit or an individual NPDES permit for International Transportation's discharge of polluted stormwater. In addition, International Transportation must apply for an individual NPDES permit if the Facility is discharging process wastewater, or has any other non-stormwater discharge containing pollutants that is not authorized by the General Permit. By failing to apply for coverage under the General Permit or an individual permit, International Transportation is violating CWA Sections 301(a) and 402(a) and (p) and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).<sup>17</sup>

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<sup>17</sup> Sections 301(a) and 402(a) and (p) make it unlawful for International Transportation to discharge stormwater associated with industrial activity without obtaining a NPDES permit. 40 C.F.R. Sections 122.26(c)(1) and (e)(1) require International Transportation to apply for a NPDES permit that covers International Transportation discharge of stormwater associated with industrial activity.



To be eligible to discharge under the General Permit, International Transportation must submit to DEC a registration form called a "Notice of Intent."<sup>18</sup> Notice of Intent forms are available online from DEC.<sup>19</sup> To register, International Transportation is required, among other things, to list all stormwater discharges, including descriptions of the industrial activities taking place in the drainage area of each discharge and the acreage of industrial activity exposed to stormwater, the separate storm sewer system or immediate surface water body or wetland to which site runoff discharges, and the name of the watershed and nearest waterbody to which the site ultimately discharges and information about whether the receiving waters are impaired.<sup>20</sup> International Transportation has failed to prepare and file a Notice of Intent or an application for an individual permit.<sup>21</sup>

**C. International Transportation is Violating the Clean Water Act by Failing to Comply with the General Permit.**

As a discharger of stormwater associated with industrial activity, International Transportation must comply at all times with the requirements of the General Permit (or an individual permit).<sup>22</sup> By discharging stormwater associated with industrial activity without complying with the General Permit, International Transportation is violating CWA Sections 301(a) and 402(a) and (p).<sup>23</sup> The main General Permit requirements that International Transportation has failed and continues to fail to meet are explained further below.

**1. International Transportation has not developed and implemented a Stormwater Pollution Prevention Plan.**

Before submitting a Notice of Intent, International Transportation must prepare, make available, and implement a Stormwater Pollution Prevention Plan ("SWPPP") in accordance with

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<sup>18</sup> See General Permit, Part I.E.3. In notifying International Transportation that the Clean Water Act requires coverage under and compliance with a valid NPDES permit in order to lawfully discharge, and that submission of a Notice of Intent to DEC is required in order to obtain coverage under the General Permit, Sierra Club does not concede that all of the activities conducted at the Facility are necessarily eligible for coverage under that permit. For example, if the Facility is discharging process wastewater, such as wash water or steam cleaning water, or has any other polluted non-stormwater discharge that is not authorized by the General Permit, then an individual NPDES permit is required and the failure to obtain and comply with an individual NPDES permit for such discharges also violates CWA §§ 301(a) and 402(p). The conditions for eligibility to discharge under the General Permit are provided in Part I.C of the permit.

<sup>19</sup> See [http://www.dec.ny.gov/docs/water\\_pdf/gpnoi.pdf](http://www.dec.ny.gov/docs/water_pdf/gpnoi.pdf).

<sup>20</sup> See Division of Water, NY DEC, *Notice of Intent For Stormwater Discharges Associated with Industrial Activity under the State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit GP-0-12-001 (MSGP)* (2012), available at: [http://www.dec.ny.gov/docs/water\\_pdf/gpnoi.pdf](http://www.dec.ny.gov/docs/water_pdf/gpnoi.pdf).

<sup>21</sup> A thorough search of EPA's Enforcement & Compliance History Online ("ECHO") database and DEC's records reveals that no Notice of Intent has been submitted for the Facility.

<sup>22</sup> This section discusses the compliance requirements of the General Permit. If International Transportation elects to seek coverage under an individual NPDES permit instead, the conditions of that individual permit will be at least as strict as those of the General Permit, thus International Transportation will still be required to comply with all of the following.

<sup>23</sup> Sections 301(a) and 402(a) and (p) make it unlawful for International Transportation to discharge stormwater associated with industrial activity without first complying with all of the conditions established in a NPDES permit.

schedules established in the General Permit.<sup>24</sup> The SWPPP must identify potential sources of pollution that may affect the quality of stormwater discharges associated with industrial activity. Further, the SWPPP must describe and ensure the implementation of practices that minimize the discharge of pollutants in these discharges and that assure compliance with the other terms and conditions of the General Permit, including achievement of effluent limitations.<sup>25</sup>

Among other things, the SWPPP must include: a general site description, a general location map identifying the location of the facility and all receiving waters to which stormwater discharges, information related to a company stormwater pollution prevention team, a summary of potential pollutant sources, a description of control measures and best management practices, and schedules and procedures for implementation of control measures, monitoring and inspections.<sup>26</sup>

International Transportation has not developed and implemented a legally compliant SWPPP, as required by Part III of the General Permit.<sup>27</sup>

## **2. International Transportation has not implemented control measures and Best Management Practices that meet the best available technology standard.**

International Transportation cannot legally discharge stormwater under the General Permit until International Transportation implements mandatory general and sector-specific control measures called Best Management Practices (“BMPs”) in order to minimize the discharge of pollutants from the Facility.<sup>28</sup> The selected measures must reduce the discharge of pollution from the Facility to the extent practicable through use of the best available technology for the industry.

The General Permit requires that “[t]he owner or operator must select, design, install, and implement control measures (including best management practices),” in accordance with good engineering practices, to meet the effluent limits contained in the permit.<sup>29</sup> The General Permit’s effluent limits include both numeric limits specific to certain sectors,<sup>30</sup> as well as non-numeric technology-based effluent limits that apply to all facilities.<sup>31</sup> These non-numeric technology-based restrictions include minimizing the exposure of pollutants to stormwater<sup>32</sup> and minimizing the discharge of pollutants in stormwater<sup>33</sup> “to the extent achievable using control measures

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<sup>24</sup> See General Permit Part III.B.

<sup>25</sup> See General Permit Part III.A.

<sup>26</sup> See General Permit Part III.C.

<sup>27</sup> Sierra Club believes no SWPPP exists. If a SWPPP exists, then it is either facially inadequate or has not been fully and adequately implemented.

<sup>28</sup> See General Permit Part I.B.1, see also Part VII (setting forth sector-specific control measures and practices).

<sup>29</sup> General Permit Part I.B.1.a; see also Part III.C.7 (“The SWPPP must document the location and type of BMPs installed and implemented at the facility to achieve the non-numeric effluent limits in Part I.B.1.a.(2) and where applicable in Part VIII, and the sector specific numeric effluent limitations in Part VIII.”).

<sup>30</sup> See General Permit, Part VIII.

<sup>31</sup> See General Permit, Part I.B.1.a.2.

<sup>32</sup> See General Permit, Part I.B.1.a.2.a.

<sup>33</sup> See General Permit, Part I.B.1.a.2.f.



(including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.”<sup>34</sup>

International Transportation has not minimized the discharge of pollution to the extent achievable by implementing control measures or BMPs that are technologically achievable and economically practicable and achievable in light of best industry practice, as required by Parts I.B.1 and VIII of the General Permit.

**3. International Transportation has not conducted routine site inspections and complied with monitoring, recordkeeping, and reporting requirements.**

International Transportation must conduct an annual comprehensive site inspection and evaluation of areas where industrial materials or activities are exposed to precipitation or where spills and leaks have occurred within the past three years.<sup>35</sup> The inspection must ensure that all stormwater discharges are adequately controlled and that all BMPs are functioning as expected.<sup>36</sup> Records of this inspection must be kept for five years.<sup>37</sup>

In addition, qualified facility personnel must carry out routine inspections at least quarterly.<sup>38</sup> During these inspections, personnel must evaluate conditions and maintenance needs of stormwater management devices, detect leaks and ensure the good condition of containers, evaluate the performance of the existing stormwater BMPs described in the SWPPP, and document any deficiencies in the implementation and/or adequacy of the SWPPP.<sup>39</sup> Such deficiencies must then be addressed through corrective actions.

The General Permit also requires that all covered facilities conduct multiple types of analytical monitoring, and DEC may require additional individualized monitoring as well.<sup>40</sup> In particular, all facilities authorized under the General Permit must:

- collect and analyze stormwater samples for each outfall at least annually;<sup>41</sup>
- conduct visual monitoring of stormwater discharges at least quarterly;<sup>42</sup>
- perform an annual dry weather inspection to detect non-stormwater discharges;<sup>43</sup>
- inspect, sample and monitor discharges from coal pile runoff;<sup>44</sup>

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<sup>34</sup> General Permit, Part I.B.1.

<sup>35</sup> See General Permit, Part IV.A.1

<sup>36</sup> See General Permit, Part IV.A.1

<sup>37</sup> See General Permit, Part IV.A.2

<sup>38</sup> See General Permit, Part III.C.7.b.2.

<sup>39</sup> See General Permit, Part III.C.7.b.1 and b.3.

<sup>40</sup> See General Permit, Part IV.B.3.

<sup>41</sup> See General Permit, Part IV.B.1.c (requiring at least annual collection and analysis of stormwater samples). See General Permit, Part IV.B.1.d, .e, .f, and .g for obligations to sample more frequently.

<sup>42</sup> See General Permit, Part IV.B.1.a.

<sup>43</sup> See General Permit, Part IV.B.1.b.

<sup>44</sup> See General Permit, Part IV.B.1.d.



- inspect, sample and monitor discharges from secondary containment structures and transfer areas;<sup>45</sup>
- document storm events during which any samples are taken;<sup>46</sup>
- document all of these monitoring activities;<sup>47</sup>
- keep records of the monitoring with the Facility's SWPPP;<sup>48</sup> and
- submit an annual report to DEC accompanied by a Discharge Monitoring Report detailing the results of any required stormwater samples, as well as reports that documents any instance of non-compliance with benchmarks or numeric effluent limitations.<sup>49</sup> Because International Transportation discharges through a municipal separate storm sewer system, signed copies of these reports must be provided to the sewer system operator as well.<sup>50</sup>

Because International Transportation engages in industrial activities associated with Sector M sampling is required for:

- Oil and Grease;
- Benzene;
- Ethylbenzene;
- Toluene;
- Xylene;
- Total Recoverable Aluminum;
- Total Recoverable Iron;
- Total Recoverable Lead

Sierra Club is not necessarily aware of all industrial activities taking place at the Facility. To the extent that industrial activities other than the above are carried out at the Facility, other sampling may be required as well.<sup>51</sup> This notice provides International Transportation with sufficient information to identify the standards and limitations that apply to all categories of industrial activity.

International Transportation has failed to conduct the required annual and other routine inspections, monitoring, and testing, as required by, at least, Parts III, IV, and VIII of the General Permit. International Transportation also has failed to retain records and submit monitoring reports to DEC and local sewer system operator, as required by, at least, Parts IV and VIII of the General Permit.

**4. International Transportation has failed to comply with additional requirements located in Part VIII of the General Permit.**

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<sup>45</sup> See General Permit, Part IV.B.1.f.

<sup>46</sup> See General Permit, Part IV.B.2.c.

<sup>47</sup> See, e.g., General Permit, Parts IV.B.1.a.8, IV.B.1.b.4, IV.B.1.c.9. *see generally* Part IV.E.

<sup>48</sup> See General Permit, Part IV.E.

<sup>49</sup> See General Permit, Part IV.B.1 and 2 and Part IV.C.

<sup>50</sup> See General Permit, Part Part IV.C.4.b.

<sup>51</sup> See General Permit, Part VIII.

As noted above, the General Permit contains various requirements specific to Sector M. These requirements, some of which are referenced above, are collected in Part VIII of the General Permit. They include:

- A requirement that the site map shall identify the locations where the following activities or sources may be exposed to precipitation/ surface runoff:
  - Vehicle Storage Areas;
  - Dismantling Areas;
  - Parts Storage Areas (e.g. engine blocks, tires, hub caps, batteries, hoods, mufflers);
  - Liquid Storage Tanks and Drums for Fuel and Other Fluids;
  - Location of Each Discharge and Monitoring Point
- A requirement that the SWPP must describe *BMPs* that prevent or minimize contamination of stormwater runoff from all areas used for vehicle dismantling or maintenance; vehicle, parts and equipment storage areas; vehicle, equipment, and parts cleaning as well as liquids storage. The SWPPP shall document considerations of the following BMPs (or their equivalents):
  - Inspect all incoming vehicles for leaks and take appropriate actions to prevent the release of automobile fluids to the ground;
  - Remove fuel, refrigerants and the battery as soon as possible;
  - Vehicle draining and dismantling activities must be conducted in a bermed area, constructed of concrete or other surfaces that allows equivalent protection to groundwater;
  - The dismantling area should also be covered;
  - Promptly transfer any drained fluids to segregated storage containers that are properly labeled and in good condition (e.g., anti-freeze, gasoline, used oil, transmission fluid, brake fluids, window washer fluid) for reuse or recycling;
  - Drain and collect all fluids to the maximum extent practicable in accordance with best available industry standards from engines, radiators, transmissions, heater core, brake fluid reservoirs, differentials, hoses, fuel tanks, air conditioning units and window washing fluids before crushing or storage over bare ground;
  - When pulling parts from vehicles in the yard, employ a catch sled or tray to recover the majority of fluids which will be released;
  - Place drip pans, large plastic sheets, or canvas under vehicles or equipment during maintenance and dismantling activities or awaiting such activities; inspect drip pans regularly.
  - Where drip pans are used, care should be taken to prevent accidental spills.
  - Use large plastic or metal bins with secure lids to store oily parts (e.g., small engine parts);
  - Store cracked batteries in a non-leaking covered container;
  - Store used batteries within non-leaking secondary containment or by other equivalent means to prevent leaks of acid into stormwater discharges;
  - Do not pour liquid waste down floor drains, sinks, or outdoor storm drain inlets;



- Plug floor drains that are connected to the storm or sanitary sewers;
  - Recover air conditioner refrigerants using EPA certified recycling equipment;
  - Maintain an organized inventory of materials used in the maintenance shop;
  - Dispose of greasy rags, air filters, and degreasers properly;
  - Label and track the recycling of waste material (e.g., used oil, spent solvents, batteries);
  - Drain oil and transmission filters before disposal or recycling;
  - Inspect the maintenance area regularly for proper implementation of control measures;
  - Use dry cleanup methods and prohibit the practice of hosing down the shop floor;
  - Recycle mineral spirits and solvents;
  - Provide treatment of stormwater discharges with devices such as oil-water separators;
  - Train employees on proper waste control and disposal procedures, on storage and inspection procedures, on washing procedures, and on filling and transfer of liquids.
  - Install curbing, berms or dikes around storage and cleaning areas;
  - Confine storage of parts, equipment and vehicles to designated areas;
  - Cover all storage areas with a permanent cover (e.g., roofs) or temporary cover (e.g., canvas tarps);
  - Avoid washing parts or equipment outside;
  - Designate an area for cleaning activities;
  - Consider using detergent-based or water-based cleaning systems in place of organic solvent degreasers;
  - Use phosphate-free biodegradable detergents;
  - Contain steam cleaning wash waters or discharge under an applicable SPDES permit;
  - Inspect cleaning area regularly;
  - Provide containment and a roof over liquid storage areas;
  - Inspect storage tanks to detect potential leaks and perform preventive maintenance;
  - Inspect piping systems (pipes, pumps, flanges, couplings, hoses, and valves) for failures or leaks;
- It is a requirement that routine facility inspections conducted by qualified facility personnel identified in Part III.C.7.b shall include, but is not limited to the following:
    - All incoming vehicles upon arrival at the site for leakage;
    - Outdoor storage of vehicles, parts or equipment for leakage at least quarterly;
    - Outdoor storage of fluids in tanks or containers for leakage at least quarterly;
    - Prior to crushing, spot check vehicles for removal of fluids, battery, mercury switches, lead battery connectors, lead tire balance weights, PCB capacitors, etc.
  - The SWPPP must include details about an employee training program. Training must be conducted annually at a minimum; however, more frequent training may be necessary if there is high employee turnover. Employee training must, at a minimum, address the

following areas when applicable:

- Used oil management;
  - Spill prevention and response;
  - Purpose, function and maintenance of erosion and sediment control practices;
  - Good housekeeping practices;
  - Used battery management;
  - Removal of parts containing mercury;
  - Lead and PCBs;
  - Proper handling (i.e., collection, storage, and disposal) of all fluids;
  - Identification of unpermitted discharges from floor drains, sinks, or outdoor storm drain inlets;
  - Condition and maintenance needs of stormwater controls;
  - Sump maintenance (regular pumping, use of pads around perimeter to prevent unwanted hazardous materials from entering, etc.);
  - Condition and maintenance needs for oil water separators, filters and screens used to remove sludges and solids before they reach waste sumps;
  - Prohibition of the practice of hosing down the shop floor;
  - Use of dry cleanup methods, and/or collecting the stormwater runoff from the maintenance area.
- The SWPPP must consider management practices, such as berms or drainage ditches on the property line that may be used to prevent run-on from neighboring properties. Berms must be considered for uncovered outdoor storage of oily parts, engine blocks, and aboveground liquid storage. The owner or operator shall consider the installation of detention ponds, filtering devices, and oil/water separators.
- The SWPPP must include an Erosion and Sediment Control plan (ESC plan) addressing the storm water run-on and run-off control systems in all areas of the facility. The ESC plan must be developed by a qualified individual and implemented by the owner or operator. The plan must be prepared in accordance the New York Standards and Specifications for Erosion and Sediment, 2005, or equivalent.
- The SWPPP must include a Spill and Leak Prevention plan. Required elements of the plan include:
  - Any spill of petroleum must be reported in accordance with 6 NYCRR Part 613.8.;
  - Any spill of a hazardous substance must be reported in accordance with 6 NYCRR Part 595.3.;
  - Notification must be reported to the DEC Spill hotline (1-800- 457-7362) within two hours of identifying a release. Spills or leaks outside of containment areas shall be cleaned up immediately and spills or leaks within containment shall be controlled immediately and cleaned up as stated in Part III.C.F.3.b.;
  - After clean up from a spill, absorbents must be promptly placed in containers for proper disposal;
  - All vehicles that are intended to be dismantled must be properly drained of all



fluids prior to being dismantled or crushed, or other equivalent means must be taken to prevent leaks or spills of fluids including motor oil, transmission fluid, fuel and antifreeze.

International Transportation's activities are included in the definition of industrial activity to which the CWA applies. Therefore, International Transportation must obtain coverage under and comply with the requirements of the General Permit, including those specific to International Transportation's industrial activities, as described in Part VIII and outlined above. International Transportation has failed to obtain coverage under the General Permit and comply with these additional requirements.

**5. International Transportation is clearly violating the Clean Water Act.**

In sum, International Transportation's discharge of stormwater associated with industrial activities without a permit, International Transportation's failure to apply for permit coverage, and International Transportation's failure to comply with the above-listed conditions of the General Permit (or an individual NPDES permit) constitute violations of the General Permit and of Sections 301(a) and 402(p) of the Clean Water Act.

**III.**

**PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS**

International Transportation and Equipment Exports, Ltd., Michael Bulzomi, Cherokee Realty Corp., Rita Judith Gambino, and Long Island Customs (together "International Transportation") are the persons, as defined by Section 502(5) of the CWA, responsible for the violations alleged in this Notice. Sierra Club believes International Transportation has operated the Facility ever since November 2000.<sup>52</sup> International Transportation has operational control over the day-to-day industrial activities at this Facility. Therefore, International Transportation is responsible for managing stormwater at the Facility in compliance with the CWA. Sierra Club hereby puts International Transportation on notice that if Sierra Club subsequently identify additional persons as also being responsible for the violations set forth above, Sierra Club intends to include those persons in this action.

**IV.**

**LOCATION OF THE ALLEGED VIOLATION**

The violations alleged in this Notice have occurred and continue to occur at the Facility located at 300 Henry Street Block 2, Lot 52.006, 1-A Bahama Street Block 3, Lot 072.001, and 150

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<sup>52</sup> Sierra Club believes the Facility has operated as an auto salvage facility under the control of International Transportation since 2000.

Thorburn Avenue Block 2, Lot 52.004 in Lindenhurst, New York, as well as in these immediately adjacent streets. The failure to develop and implement pollution prevention plans and take the other required measures are violations occurring at the Facility in general and in the inadequate documents themselves.<sup>53</sup>

## V.

### DATES OF VIOLATION

Every day upon which International Transport has failed to apply for permit coverage since International Transport first commenced operations at the Facility and discharged polluted stormwater is a separate violation of Section 301(a) of the CWA and EPA's regulations implementing the CWA.<sup>54</sup> These days of violation have continued consecutively since 2000.

Additionally, International Transportation has discharged pollution without a permit in violation of Section 301(a) of the CWA on every day since International Transportation commenced operations at the Facility on which there has been a measurable precipitation event or discharge of previously accumulated precipitation (i.e., snowmelt) over 0.1 inches.

Finally, if International Transportation seeks permit coverage after receiving this letter but fails to fully comply with the requirements of the General Permit (or an individual permit), each day upon which International Transportation claims coverage under a NPDES permit but fails to comply with that permit will constitute a separate day of violation with respect to each unmet condition of that permit.

International Transportation is liable for the above-described violations occurring prior to the date of this letter, and for every day after the date of this letter that these violations continue. In addition to the violations set forth above, this Notice covers all violations of the CWA evidenced by information that becomes available to International Transportation after the date of this Notice of Intent to File Suit.<sup>55</sup> These violations are ongoing, and barring full compliance with the permitting requirements of the Clean Water Act, these violations will continue.

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<sup>53</sup> The federal courts have held that a reasonably specific indication of the area where violations occurred, such as the name of the facility, is sufficient and that more precise locations need not be included in the notice. See, e.g., *Natural Resources Defense Council v. Southwest Marine, Inc.*, 945 F. Supp. 1330, 1333 (S.D. Cal. 1996), *aff'd* 236 F.3d 985, 996 (9th Cir. 2000); *City of New York v. Anglebrook Ltd. Partnership*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995); *United Anglers v. Kaiser Sand & Gravel Co.*, No. C 95-2066 CW, 1995 U.S. Dist. LEXIS 22449 at \*4 (N.D. Cal. Sept. 27, 1995).

<sup>54</sup> See also 33 U.S.C. §§ 402(p)(3)(A) and (p)(4)(A) (requiring the establishment of industrial stormwater NPDES permits and of a permit application process).

<sup>55</sup> See, e.g., *Public Interest Research Grp. v. Hercules, Inc.*, 50 F.3d 1239, 1248-49 (3d Cir. 1995) (a notice that adequately identifies specific violations to a potential defendant also covers repeated and related violations that the plaintiff learns of later. "For example, if a permit holder has discharged pollutant 'x' in excess of the permitted effluent limit five times in a month but the citizen has learned only of four violations, the citizen will give notice of the four violations of which the citizen then has knowledge but should be able to include the fifth violation in the suit when it is discovered.")



## VI.

### **RELIEF REQUESTED**

Sierra Club will ask the court to order International Transportation to comply with the Clean Water Act, to pay penalties, and to pay Sierra Club's costs and legal fees.

First, Sierra Club will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d) and such other relief as permitted by law. Sierra Club will seek an order from the Court requiring International Transportation to obtain NPDES permit coverage and to correct all other identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Second, pursuant to Section 309(d) of the CWA,<sup>56</sup> each separate violation of the CWA subjects International Transportation to a penalty not to exceed \$32,500 per day for each violation which occurred between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for each violation that occurred after January 12, 2009.<sup>57</sup> Sierra Club will seek the full penalties allowed by law.

Third and lastly, pursuant to Section 505(d) of the CWA, Sierra Club will seek recovery of their litigation fees and costs (including reasonable attorney and expert witness fees) associated with this matter.

## VII.

### **PERSONS GIVING NOTICE**

The full name, address, and telephone number of the persons giving notice are as follows:

Sierra Club (Long Island Group)  
2101 Webster St. Suite 1300  
Oakland, CA 94612  
Attn:

Jane Fasullo  
631-689-1568

Ann Aurelio  
631-567-1937

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<sup>56</sup> 33 U.S.C. § 1319(d); *see also* 40 C.F.R. § 19.4 (Adjustment of Civil Monetary Penalties for Inflation).

<sup>57</sup> 40 C.F.R. § 19.2.

## VIII.

### IDENTIFICATION OF COUNSEL

Sierra Club is represented by legal counsel in this matter. The name, address, and telephone number of Sierra Club attorneys are:

Reed Super, Esq.  
Edan Rotenberg, Esq.  
Super Law Group, LLC  
180 Maiden Lane, Suite 603  
New York, New York 10038  
(212) 242-2355

## IX.

### CONCLUSION

The foregoing provides more than sufficient information to permit International Transportation to identify the specific standard, limitation, or order alleged to have been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of such violation, and the full name, address, and telephone number of the person giving notice.<sup>58</sup>

If International Transportation has developed a SWPPP, Sierra Club requests that International Transportation send a copy to the undersigned attorney.<sup>59</sup> Otherwise, Sierra Club encourages International Transportation to begin developing a SWPPP immediately after receiving this letter and ask that International Transportation please inform the undersigned attorney of International Transportation's efforts so that Sierra Club can work with International Transportation to avoid disputes over the contents of the SWPPP.<sup>60</sup>

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<sup>58</sup> 40 C.F.R. § 135.3(a).

<sup>59</sup> Note that under Part III.D.2 of the General Permit, the owner or operator of a facility "must make a copy of the SWPPP available to the public within 14 days of receipt of a written request."

<sup>60</sup> Sierra Club I.I Group will not send a new notice letter in response to any effort International Transportation makes to come into compliance with the Clean Water Act after receiving this letter, for example, by developing a SWPPP. The federal courts have held that citizens sending a notice letter are not required to identify inadequacies in compliance documents that do not yet exist and are "not required to send a second notice letter in order to pursue specific claims regarding the inadequacies of [a defendant's] post-notice compliance efforts." *Water Keepers N. Cal. v. AG Indus. Mfg.*, 375 F.3d 913, 920 (9th Cir. 2004). See also *Natural Resources Defense Council v. Southwest Marine, Inc.*, 236 F.3d 985, 997 (9th Cir. 2000) ("subject matter jurisdiction is established by providing a notice that is adequate on the date it is given to the defendant. The defendant's later changes . . . do not retroactively divest a district court of jurisdiction under 33 U.S.C. § 1365(b)."); *City of New York v. Anglebrook L.P.*, 891 F. Supp. 900,



During the sixty-day notice period, Sierra Club is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of protracted litigation. If International Transportation wishes to pursue such discussions, please contact the undersigned attorney immediately so that negotiations may be completed before the end of the sixty-day notice period. We do not intend to delay the filing of a complaint in federal court, regardless of whether discussions are continuing at the conclusion of the sixty days.

Very truly yours,



Edan Rotenberg, Esq.  
Super Law Group, LLC  
180 Maiden Lane, Suite 603  
New York, New York 10038  
(212) 242-2355

cc:

Gina McCarthy, Administrator  
Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Judith A. Enck, EPA Region 2 Administrator  
Environmental Protection Agency  
290 Broadway  
New York, NY 10007-1866

Basil Seggos, Commissioner  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-1011

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908 (S.D.N.Y. 1995) (plaintiff's notice letter based on inadequacies of defendant's original SWPPP held sufficient to establish court's jurisdiction, even though defendant later prepared a revised SWPPP).

